

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3205 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AIYUBBHAI RAHIMBHAI KHATUMBARA

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR JASWANT K SHAH for Petitioner

MR HC RAWAL for Respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/04/2002

ORAL JUDGEMENT

1. Rule. Heard Mr.J.K.Shah, learned advocate appearing on behalf of the petitioner and Mr.H.C.Rawal, learned advocate appearing on behalf of the respondent.
2. The brief facts of the present petition are as under :-

2.1 The father of the petitioner was working as Conductor with the respondent - Corporation, who expired while he was on duty on 6th October, 1998 and, thereafter, immediately, the petitioner has approached the respondent - Corporation by application dated 9th November, 1998 with a request to give companssionate appointment to the petitioner. On 3rd October, 2000, the application of the petitioner for compassionate appointment was rejected by respondent - Corporation only on the ground that the petitioner's family income was Rs.2,500-00 and, therefore the petitioner has submitted that family income, the pensionary benefit, which was received by the mother of the petitioner, has been included Rs.1,750-00. The petitioner again applied by application dated 27th July, 2001, to reconsider the case for companssionate appointment as income of the family has not exceeded prescribed limit. On 1st September, 2001, the second application was also rejected by the respondent - Corporation on the same ground, considering the family pension amount of Rs.1,750-00, which is received by the mother of the petitioner. Therefore, ultimately, the petitioner has approached before this Court.

3. Mr.J.K.Shah, learned advocate for the petitioner has relied upon the decision of this Court in Special Civil Application No.12409 of 2000 dated 19th June, 2001, wherein this Court has considered this question and decided that while considering the income of the family as a whole whatever amount of pension is received to be excluded, while considering the income of the family. He has also submitted that if the pension amount is excluded from the family income Rs.2,750-00 then his case is covered as per circular of the Corporation.

4. Mr.H.C.Rawal, learned advocate appearing on behalf of the respondent - Corporation has submitted that the decision taken by the respondent - Corporation is legal and valid and according to the circular of the and, therefore, no interference is required.

5. I have considered submissions made by learned advocates for both the parties. The respondent Corporation has rejected the application of the petitioner for companssionate appointment by order dated 1st September, 2001. The respondent Corporation has considered the income of the petitioner is of Rs.500-00 and income of the brother of the petitioner is of Rs.500-00 and, thereafter, considered total income of Rs.1,000-00 and included the above amount, which is

received by the widow i.e. Rs.1,750-00 and ultimately, the total income comes to Rs.2,750-00 and, therefore, the S.T. Corporation come to the conclusion that the total income exceeds the prescribed limit. From the letter dated 1st September, 2001, whereby the application of the petitioner was rejected, it is clear that while calculating total income of the family, the respondent Corporation has taken into account the family pension received by the widow i.e. Rs.1,750-00. Therefore, while, considering this decision of the respondent Corporation dated 1st September, 2001, the view taken by this Court in Special Civil Application No.12409 of 2000 dated 19th June, 2001 more particularly para-2 quoted as under :-

"So far as the income of the family pension is concerned, this Court has taken the view in Special Civil Application No.11020 of 1993 in the case of Dilipainh B Rathod Vs. State of Gujarat that while considering the total income of the family of the deceased, income of the pension is not required to be taken into consideration. In para-3 it has been observed by this Court as under :

"Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court on the case of C.B.Maru v/s. Dhanduka Nagar Panchaya, reported in 1993 (2) GLH 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v/s. State of Gujarat and ors., reported in 1998 (1) GLH (UJ) 23. In C.B.Maru's case (supra), this Court while placing of reliance in the case of Sm. Phoolwati Vs. Union of India and ors., reported in AIR 1991 SC 469 has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of

Rs.645/-- per month and her husband had died on 15th October, 1990. In the case of C.B. Maru (supra) the other details of income regarding Dearness Allowance, Medical Allowance etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1,000/--. In the present case, the father of the petitioner had died in April, 1991 and, in the case of C.B. Maru (supra) the date of the death of deceased is October 1990 and therefore, there is hardly a difference of about six months in the date of death. Even if 505 Dearness Allowance is added to Rs.645/--, it would come to Rs.645/- + Rs.322.50 i.e. Rs.967.50/- and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (supra), this Court while placing reliance on C.R. Maru's case (supra) has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1,000/-, merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and, therefore, this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on

compassionate grounds. The communication sent to the petitioner as contained in Annexure 'A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date of copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this order and for that purpose, direct service is permitted."

6. In view of the aforesaid decision of this Court, according to my opinion the decision, which has been taken by the respondent - Corporation by letter dated 1st September, 2001, considering the family pension income of Rs.1,750/-- in the total income of the family is illegal and contrary to the law. Therefore, the order dated 1st September, 2001 is required to be quashed and set aside.

7. In the result, the present petition is allowed. Rule is made absolute. The orders passed by the respondent - Corporation dated 3rd October, 2000 and 1st September, 2001 are hereby quashed and set aside. It is directed to the respondent Corporation that while considering the application of the petitioner for compassionate appointment dated 27th July, 2001, it shall exclude the pension amount, which has been received by the widow and, thereafter, whatever income available to the family, the same will require to be considered, while calculating the total income of the family. This exercise is required to be carried out by the respondent - Corporation within one month from the date of the receipt of the copy of this order. Direct service is permitted.

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